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I. STATUS OF CLAIMS

Claims 1-80 were pending at the time of the Office Action dated April 7, 2008.

Claims 1-80 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-50 of copending Application No. 10/734,647. *See Office Action*, p. 3-4 (April 7, 2008).

Claims 1-72 stand rejected under 35 USC § 112 as reciting a limitation “first network and second network” with insufficient antecedent basis. *See Office Action*, p. 3 (April 7, 2008).

Claims 1-80 stand rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 6,345,028 to Jaeger (hereinafter “Jaeger”). *See Office Action*, p. 4 (April 7, 2008).

II. DOUBLE PATENTING REJECTION

Applicant requests that the Examiner hold the provisional double patenting rejection in abeyance until there is allowable subject matter.

Applicant notes that the Examiner has asserted that the claims of the instant application are arguably broader than the potentially conflicting claims in Application No. 10/734,647 . *See Office Action*, p. 3 (April 7, 2008). The Examiner has concluded nonetheless that the conflicting claims are not patentably distinct because it would be obvious to eliminate the limitations of narrower claims to obtain broader claims. In the event that the instant application is brought to Appeal, Applicant wishes to preserve for Appeal a respectful disagreement with this line of reasoning when used as a general axiomatic way of making a double patenting rejection.

Again, since there is not yet allowable subject matter, Applicant respectfully requests that the provisional double patenting rejection be held in abeyance.

III. REJECTIONS UNDER 35 USC § 112

Independent claims 1, 37, and 73 are being currently amended to more particularly point out and distinctly claim the subject matter. The amendments are for greater clarity and do not add new matter. The amendments incidentally establish antecedent basis for “first network and second network” in claims 1-72. Thus, Applicant respectfully requests that the 35 USC § 112 rejection of claims 1-72 be removed and asserts that these claims are in condition for allowance.

IV. ISSUES TO BE REVIEWED

The issues in this response relate to whether the art of record establishes a *prima facie* case of anticipation of Applicant’s Claims 1-80. For reasons set forth elsewhere herein, Applicant respectfully asserts that the art of record does not establish a *prima facie* case of unpatentability of any pending claim. Accordingly, Applicant respectfully requests that Examiner hold all pending Claims 1-80 allowable for at least the reasons described herein, and issue a Notice of Allowance on same.

V. ARGUMENT: ART OF RECORD DOES NOT ESTABLISH *PRIMA FACIE* CASE OF UNPATENTABILITY IN VIEW OF CITED ART OF RECORD

Applicant respectfully asserts herein that, under the MPEP and legal standards for patentability as set forth below, the art of record does not establish a *prima facie* case of the unpatentability of Applicant’s claims at issue. Specifically, Applicant respectfully shows below that the art of record does not recite the text of Applicant’s claims at issue, and hence fails to establish a *prima facie* case of unpatentability. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejections and hold all claims to be allowable over the art of record.

A. MPEP Standards for Patentability¹

The MPEP states as follows: “the examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability. If that burden is met, the burden of coming forward with evidence or argument shifts to the applicant. . . . If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent.” *MPEP* § 2107 (citing *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992)); *In Re Glaug*, 283 F.3d 1335, 62 USPQ2d 1151 (Fed. Cir. 2002) (“During patent examination the PTO bears the initial burden of presenting a *prima facie* case of unpatentability. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). If the PTO fails to meet this burden, then the applicant is entitled to the patent.”). Accordingly, unless and until an examiner presents evidence establishing *prima facie* unpatentability, an applicant is entitled to a patent on all claims presented for examination.

1. MPEP Standards for Determining Anticipation

An examiner bears the initial burden of factually supporting any *prima facie* conclusion of anticipation. *Ex Parte Skinner*, 2 U.S.P.Q.2d 1788, 1788-89 (B.P.A.I. 1986); *In Re King*, 801 F.2d 1324, 231 U.S.P.Q. (BNA) 136 (Fed. Cir. 1986); *MPEP* § 2107 (citing *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992) (“[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability....”). Failure of an examiner to meet this burden entitles an applicant to a patent. *Id.* (“[i]f examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent”).

¹ Applicant is aware that Examiner is familiar with the MPEP standards. Applicant is merely setting forth the MPEP standards to serve as a framework for Applicant’s arguments following and to ensure a complete written record is established. Should Examiner disagree with Applicant’s characterization of the MPEP standards, Applicant respectfully requests correction.

The MPEP indicates that in order for an examiner to establish a *prima facie* case of anticipation of an applicant's claim, the examiner must first interpret the claim,² and thereafter show that the cited prior art discloses the same elements, in the same arrangement, as the elements of the claim which the examiner asserts is anticipated. More specifically, the MPEP states that "[a] claim is anticipated *only if each and every element as set forth in the claim is found*, either expressly or inherently described, in a single prior art reference. . . . The identical invention must be shown in as complete detail as is contained in the . . . claim. . . . The elements must be arranged as required by the claim". *MPEP* § 2131 (emphasis added). Consequently, under the guidelines of the MPEP set forth above, if there is *any* substantial difference between the prior art cited by an examiner and an applicant's claim which the examiner asserts is rendered anticipated by the prior art, the prior art does NOT establish a *prima facie* case of anticipation and, barring other rejections, the applicant is entitled to a patent on such claim.

2. MPEP Standards for Determining Obviousness

"[T]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness."³ *MPEP* § 2142. The MPEP indicates that in order for an examiner to establish a *prima facie* case that an invention, as defined by a claim at issue, is obvious, the examiner must (1) interpret the claim at issue; (2) define one or more prior art reference components relevant to the claim at issue; (3) ascertain the differences between the one or more prior art reference components and the elements of the claim at issue; and (4) adduce objective evidence which

² With respect to interpreting a claim at issue, the MPEP directs that, during examination -- as opposed to subsequent to issue -- such claim be interpreted as broadly as the claim terms would reasonably allow, in light of the specification, when read by one skilled in the art with which the claimed invention is most closely connected. *MPEP* § 2111.

³ An invention, as embodied in the claims, is rendered obvious if an examiner concludes that although the claimed invention is not identically disclosed or described in a reference, the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *MPEP* § 2141 (citing 35 U.S.C. § 103).

establishes, under a preponderance of the evidence standard, a teaching to modify the teachings of the prior art reference components such that the prior art reference components can be used to construct a device substantially equivalent to the claim at issue. This last step generally encompasses two sub-steps: (1) adducement of objective evidence teaching how to modify the prior art components to achieve the individual elements of the claim at issue; and (2) adducement of objective evidence teaching how to combine the modified individual components such that the claim at issue, as a whole, is achieved. *MPEP* § 2141; *MPEP* § 2143. Each of these forgoing elements is further defined within the *MPEP*. *Id.*

This requirement has been explained recently by the Supreme Court in *KSR v. Teleflex*, 550 U.S. ____; 127 S. Ct. 1727 (2007) which noted that such a rejection requires "some articulated reasoning ... to support the legal conclusion of obviousness." As stated by the Court, obviousness can be established where "there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, *this analysis should be made explicit.*" (*emphasis added*) See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) ('[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.')." *KSR v. Teleflex*, 550 U.S. ____; 127 S. Ct. 1727 at 1741.

As further described by the Court "[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what,

in some sense, is already known." *KSR v. Teleflex*, 550 U.S. ____; 127 S. Ct. 1727 at 1741.

a) Interpreting a Claim at Issue

With respect to interpreting a claim at issue, the MPEP directs that, during examination -- as opposed to subsequent to issue -- such claim be interpreted as broadly as the claim terms would reasonably allow when read by one skilled in the art with which the claimed invention is most closely connected. In practice, this is achieved by giving each of the terms in the claim the "plain meaning" of the terms as such would be understood by those having ordinary skill in the art, and if portions of the claim have no "plain meaning" within the art, or are ambiguous as used in a claim, then the examiner is to consult the specification for clarification. *MPEP* § 2111.

b) Definition of One or More Prior Art Reference Components Relevant to the Claim at Issue

Once the claim at issue has been properly interpreted, the next step is the definition of one or more prior art reference components (*e.g.*, electrical, mechanical, or other components set forth in a prior art reference) relevant to the properly interpreted claim at issue. With respect to the definition of one or more prior art reference components relevant to the claim at issue, the MPEP defines three proper sources of such prior art reference components, with the further requirement that each such source must have been extant at the time of invention to be considered relevant. These three sources are as follows: patents as defined by 35 U.S.C. § 102, printed publications as defined by 35 U.S.C. § 102, and information (*e.g.*, scientific principles) deemed to be "well known in the art"⁴ as defined under 35 U.S.C. § 102. *MPEP* § 2141; *MPEP* § 2144.

⁴ The fact that information deemed to be "well known in the art" can serve as a proper source of prior art reference components seems to open the door to subjectivity, but such is not the case. As a remedy to this potential problem, *MPEP* § 2144.03 states that if an examiner asserts that his position is derived from and/or is supported by a teaching or suggestion that is alleged to have been "well known in the art," and that if an applicant traverses such an assertion (that something was "well known within the art"), the examiner must cite a reference in support of his or her position. The same MPEP section also states that when a rejection is based on facts within the personal knowledge of an examiner, the data should be stated

**c) Ascertainment of Differences between Prior Art
Reference Components and Claim at Issue;
Teaching to Modify and/or Combine Prior Art
Reference Components to Remedy Those
Differences in Order to Achieve Recitations of Claim
at Issue**

With one or more prior art components so defined and drawn from the proper prior art sources, the differences between the one or more prior art reference components and the elements of the claim at issue are to be ascertained. Thereafter, in order to establish a case of *prima facie* obviousness, an examiner must set forth a rationale, supported by objective evidence⁵ sufficient to demonstrate under a preponderance of the evidence standard, that in the prior art extant at the time of invention there was a teaching to modify and/or combine the one or more prior art reference components to construct a device practicably equivalent to the claim at issue.

The preferable evidence relied upon is an express teaching to modify/combine within the properly defined objectively verifiable sources of prior art. In the absence of such express teaching, an examiner may attempt to establish a rationale to support a finding of such teaching reasoned from, or based upon, express teachings taken from the defined proper sources of such evidence (*i.e.*, properly defined objectively verifiable sources of prior art). *MPEP* § 2144; *In re Dembiczak*, 50 U.S.P.Q.2d 1614 (Fed. Cir. 1999).

The MPEP recognizes the pitfalls associated with the tendency to subconsciously use impermissible "hindsight" when an examiner attempts to establish such a rationale. The MPEP has set forth at least two rules to ensure against the likelihood of such impermissible use of hindsight. The first rule is that:

as specifically as possible, and the facts must be supported, when called for by the applicant, by an affidavit from the examiner. Such an affidavit is subject to contradiction or explanation by the affidavits of the applicant and other persons. *Id.* Thus, all sources of prior art reference components must be objectively verifiable.

⁵ The proper sources of the objective evidence supporting the rationale are the defined proper sources of prior art reference components, discussed above, with the addition of factually similar legal precedent. *MPEP* § 2144.

under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information,⁶ the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. Knowledge of an Applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences," conduct the search, and evaluate the "subject matter as a whole" of the invention. The tendency to resort to "hindsight" based upon an Applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

MPEP § 2142 (emphasis added). Thus, if the only objective evidence of such teaching to modify and/or combine prior art reference components is an applicant's disclosure, no evidence of such teaching exists.⁷

The second rule is that if an examiner attempts to rely on some advantage or expected beneficial result that would have been produced by a modification and/or combination of the prior art reference components as evidence to support a rationale to establish such teachings to modify and/or combine prior art reference components, the MPEP requires that such advantage or expected beneficial result be objectively verifiable teachings present in the acceptable sources of prior art (or drawn from a convincing line of reasoning based on objectively verifiable established scientific principles or teachings). *MPEP* § 2144. Thus, as a guide to avoid the use of impermissible hindsight, these rules from the MPEP make clear that absent some objective evidence, sufficient to persuade under a preponderance of the evidence standard, no teaching of such modification and/or combination exists.⁸

⁶ "Factual information" is information actually existing or occurring, as distinguished from mere supposition or opinion. *Black's Law Dictionary* 532 (5th ed. 1979).

⁷ An applicant may argue that an examiner's conclusion of obviousness is based on improper hindsight reasoning. However, "[a]ny judgment on obviousness is in a sense necessarily a reconstruction based on hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill in the art at the time the claimed invention was made and does not include knowledge gleaned only from applicant's disclosure, such a reconstruction is proper." *MPEP* § 2145(X)(A) (emphasis added).

⁸ *In Re Sang Su Lee* 277 F.3d 1338 (Fed. Cir. 2002) ("When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness.") See, e.g., *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351-52, 60 U.S.P.Q.2d 1001,

B. Technical Material Cited by Examiner (Jaeger (US 6,345,028)) Does Not Show or Suggest the Text of Independent Claim 1 as Presented Herein; Notice of Allowance of Same Respectfully Requested

1. Independent Claim 1

Independent Claim 1, as amended, recites:

A method comprising:

receiving a request for data having at least one specific content;

obtaining one or more first-network temporal addresses corresponding to the at least one specific content in response to the request for data having the at least one specific content;

obtaining one or more second-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content;

applying the one or more first-network temporal addresses to receive a first part of the at least one specific content being transmitted from a first network while approximately

1008 (Fed. Cir. 2001) (“the central question is whether there is reason to combine [the] references,” a question of fact drawing on the *Graham* factors). “The factual inquiry whether to combine references must be thorough and searching.” *Id.* It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions, and cannot be dispensed with. See, e.g., *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 U.S.P.Q.2d 1456, 1459 (Fed. Cir. 2000) (“a showing of a suggestion, teaching, or motivation to combine the prior art references is an ‘essential component of an obviousness holding’”) (quoting *C.R. Bard, Inc., v. M3 Systems, Inc.*, 157 F.3d 1340, 1352, 48 U.S.P.Q.2d 1225, 1232 (Fed. Cir. 1998)); *In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999) (“Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.”); *In re Dance*, 160 F.3d 1339, 1343, 48 U.S.P.Q.2d 1635, 1637 (Fed. Cir. 1998) (there must be some motivation, suggestion, or teaching of the desirability of making the specific combination that was made by the applicant); *In re Fine*, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988) (“teachings of references can be combined only if there is some suggestion or incentive to do so.”) (emphasis in original) (quoting *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984)). The need for specificity pervades this authority. See, e.g., *In re Kotzab*, 217 F.3d 1365, 1371, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000) (“particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed”); *In re Rouffet*, 149 F.3d 1350, 1359, 47 U.S.P.Q.2d 1453, 1457-58 (Fed. Cir. 1998) (“even when the level of skill in the art is high, the Board must identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination. In other words, the Board must explain the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious.”)).

at the same time applying the one or more second-network temporal addresses to receive a second part of the at least one specific content being transmitted from a second network; and constructing the at least one content from the first part and the second part.

As shown following, the technical material cited by Examiner does not show or suggest at least part of the text of Independent Claim 1. Accordingly, Applicant respectfully requests that Examiner allow Independent Claim 1, as described more fully below.

a) Technical Material Cited by Examiner Does Not Show or Suggest the Text of at Least Independent Claim 1.

As set forth above, Independent Claim 1 recites as follows:

1. A method comprising:
 - [a] receiving *a request* for data having at least *one specific content*;
 - [b] obtaining one or more first-network *temporal addresses* corresponding to the at least one specific content in response to the request for data having the at least one specific content;
 - [c] obtaining one or more second-network *temporal addresses* corresponding to the at least one specific content, in response to the request for data having the at least one specific content;
 - [d] applying the one or more first-network temporal addresses to receive a first part of the at least one specific content being transmitted from a first network while approximately at the same time applying the one or more second-network temporal addresses to receive a second part of the at least one specific content being transmitted from a second network; and
 - [e] constructing the at least *one content* from the first part and the second part.⁹ (Emphases added.)

⁹ The lettering of the clauses herein is merely for sake of clarity of argument and should not be taken to imply any particular ordering of the clauses.

With respect to claim 1, Examiner has stated,

“As per claim 1, Jaeger teaches a method comprising: receiving a request for data having at least one specific content (see fig 1, col. 5 lines 49-52; reading track from a disk requires a request or commands); obtaining one or more first-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content (fig 1; col. 5 lines 52-67; temporal addresses/time stamps); obtaining one or more second-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content (col. 4 lines 3-13; col. 8 lines 35-45; col. 9 lines 35-54); and constructing the at least one content from the first network and the second network (col. 4 lines 3-13); col. 8 lines 35-45; col. 9 lines 35-54; Jaeger appears to teach first and second network see col. 8 lines 35-45). Furthermore, different disk can be located or part of different network (col. 5 lines 45-67).” *See Office Action*, p. 4 (April 7, 2008).

**(1) Examiner Citations to Jaeger With Regard to
Clause [a] of Independent Claim 1:**

Applicant respectfully points out that Applicant has reviewed the portions of Jaeger identified by Examiner, and so far as Applicant can discern, Jaeger does not recite the text of clause [a] of Applicant's Independent Claim 1. Rather, the portions of Jaeger cited by Examiner with respect to Claim 1 recite as follows:

First, incremental temporal segments of each recorded audio track are read from the disk 11 in a predetermined numerical order, e.g., starting with track 1 and ending with the last recorded track (e.g., track N).

...

Fig. 1 is a schematic representation of the process of the invention for re-organizing a large plurality of audio/video/data tracks or signals on a disk drive for playback.

See Jaeger (US 6,345,028, 5:49-52; 4:55-57; Fig. 1).

As can be seen from the foregoing, the Examiner-identified portions of Jaeger do not recite the text of clause [a] as recited in Independent Claim 1. For example, Jaeger

discloses “incremental temporal segments of each recorded audio track are read from the disk.” On the other hand, clause [a] recites “*receiving a request for at least one specific content;*” (emphasis added). Neither the cited Figure nor text show or recite “receiving a request” or “a request for at least one specific content”. The Examiner asserts that “*It should be noted that it is inherently required there be some kind of ‘request’ in order to read tracks from a disk,*” however, the Examiner provides no evidence to support this requirement or its inherency.

Applicant has reviewed the Examiner-cited portions of Jaeger and is unable to locate a recitation of clause [a] of Claim 1. Applicant further respectfully points out that the Examiner has provided no evidence or reason as to why the text of the reference passages should be interpreted to teach clause [a] of Independent Claim 1 as the Examiner alleges.

Given that Applicant has shown, above, what Jaeger actually recites, the question thus naturally arises as to how Examiner saw Jaeger as “teaching” something related to Clause [a] of Independent Claim 1. Applicant respectfully points out that the Applicant’s Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this and the express recitations of Jaeger as set forth, it follows that Examiner is interpreting Jaeger through the lens of Applicant’s application, which is impermissible hindsight use. Thus, at present, Examiner’s assertions regarding Jaeger are untenable. Under the MPEP guidelines as set forth above, the cited art of record fails to establish a prima facie case of unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons, Applicant respectfully requests that Examiner hold Independent Claim 1 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner “teaches,” Applicant infers that the Examiner is relying on “personal knowledge” and/or is taking “official notice” of one or more factors to reach the factual conclusion of what the cited technical material “teaches.” In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Applicant respectfully requests that

the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner's currently unsupported assertions regarding what the cited technical material "teaches" and/or should be interpreted to "teach." *See, e.g., MPEP S 2144.03(C), If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence*, and 37 C.F.R. 1.104(d)(2).

In view of the foregoing, and under the MPEP standards as set forth above, Applicant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 1. Accordingly, for at least the foregoing reasons, Applicant respectfully asks Examiner to hold amended Independent Claim 1 allowable and to issue a Notice of Allowance of same.

**(2) Examiner Citations to Jaeger With Regard to
Clause [b] of Independent Claim 1:**

Furthermore, Applicant respectfully points out that Applicant has reviewed the portions of Jaeger identified by Examiner, and so far as Applicant can discern, Jaeger also does not recite the text of clause [b] of Applicant's Independent Claim 1, which recites, "obtaining one or more first-network *temporal addresses* corresponding to the at least one specific content, in response to the request for data having the at least one specific content" (emphasis added). The Examiner cites Fig. 1; and cites col. 5, lines 52-67 of Jaeger in the rejection, which states:

"The temporal segments are all of the same short duration, such as 100 ms, although other durations may be used. In the example of FIG. 1, the first 100 ms segments of tracks 1-N are read in a predetermined order from the disk 11 and placed in a RAM buffer in the predetermined order, where they are assembled into composite data frame 1. Frame 1 is labeled with a time stamp which indicates the starting point of the frame and also the number of the frame. Likewise, the second 100 ms segments of tracks 1-N are then read from the disk drive 11 and placed in the RAM buffer as data frame 2, which is also labeled with its respective time stamp. This process is reiterated until the entire lengths of all of the audio tracks or signals are re-ordered into the

composite data frame mode. Reiteration may be carried out R times, where R may vary from zero to any positive integer.” (See *Jaeger* 5: 52-67.)

As can be seen from the foregoing, the Examiner-identified portions of *Jaeger* do not recite the text of clause [b] as recited in Independent Claim 1. For example, *Jaeger* states “temporal segments are all of the same short duration, such as 100 ms, ... the first 100 ms segments of tracks 1-N are read in a predetermined order from the disk 11 and placed in a RAM buffer in the predetermined order, where they are assembled into composite data frame 1.” On the other hand, the cited portion of *Jaeger* does not recite obtaining one or more *temporal addresses* corresponding to the at least one specific content, as recited in clause [b] of Claim 1.

Applicant has reviewed the Examiner-cited portions of *Jaeger* and is unable to locate a recitation of clause [b] of Claim 1. Applicant further respectfully points out that the Examiner has provided no evidence or reason as to why the text of the reference passages should be interpreted to teach clause [b] of Independent Claim 1 as the Examiner alleges.

Again, given that Applicant has shown, above, what *Jaeger* actually recites, the question thus naturally arises as to how Examiner saw *Jaeger* as “teaching” something related to Clause [b] of Independent Claim 1. Applicant respectfully points out that the Applicant’s Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this and the express recitations of *Jaeger* as set forth, it follows that Examiner is interpreting *Jaeger* through the lens of Applicant’s application, which is impermissible hindsight use. Thus, at present, Examiner’s assertions regarding *Jaeger* are untenable. Under the MPEP guidelines as set forth above, the cited art of record fails to establish a prima facie case of unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons, Applicant respectfully requests that Examiner hold Independent Claim 1 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner “teaches,” Applicant infers that the Examiner is relying on “personal knowledge” and/or

is taking "official notice" of one or more factors to reach the factual conclusion of what the cited technical material "teaches." In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Applicant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner's currently unsupported assertions regarding what the cited technical material "teaches" and/or should be interpreted to "teach." *See, e.g.,* MPEP S 2144.03(C), *If Applicant Challenges a Factual Assertion as Not Properly Officially Notices or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence*, and 37 C.F.R. 1.104(d)(2).

In view of the foregoing, and under the MPEP standards as set forth above, Applicant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 1. Accordingly, for at least the foregoing reasons, Applicant respectfully asks Examiner to hold amended Independent Claim 1 allowable and to issue a Notice of Allowance of same.

(3) Examiner Citations to Jaeger With Regard to Clause [c] of Independent Claim 1:

Furthermore, Applicant respectfully points out that Applicant has reviewed the portions of Jaeger identified by Examiner, and so far as Applicant can discern, Jaeger also does not recite the text of clause [c] of Applicant's Independent Claim 1, which recites, "obtaining one or more second-network *temporal addresses* corresponding to the at least one specific content, in response to the request for data having the at least one specific content" (emphasis added). The Examiner cites col. 4, lines 3-13; col. 8, lines 35-45; and col. 9, lines 35-54 of Jaeger, which state:

"In a further embodiment, a plurality of signals (audio tracks, video tracks or data tracks) from any source are acquired from any source, such as, but not limited to, data disk, magnetic tape, any optical media, a computer bus or other data bus, internet data stream, live recording, or the like. As the signals are received, incremental temporal segments of each signal are assembled into composite data frames in a memory, and the composite data frames are recorded by any data recording system or onto any recording

medium, such as any magnetic or optical medium, any tape medium or any memory.”

The invention may be generalized as depicted in FIG. 5. A plurality of audio, video and/or data tracks/signals is acquired from any source, such as a recording system, data storage system, network resource, real-time sources, a computer bus or other data bus, internet data stream, live recording or the like. As stated previously, any reference to audio tracks, data tracks or video tracks is presumed to include any and all audio signals, data signals, or video signals, or any combination thereof, whether or not they are specifically configured as tracks, and any reference to one is intended to encompass all.

With regard to FIG. 6A, the invention also encompasses constructing composite data frames with variable segment lengths; i.e., temporal segments of a plurality of audio, video, and/or data signals, in which the temporal segments differ in length of time that each signal track is sampled. Thus, for example, the first temporal segment of the composite data frame may comprise 100 ms of track 1, the second segment may comprise 50 ms of track 2, and the third segment may be 100 ms, and subsequent temporal segment length may vary in similar or dissimilar fashion. Subsequent composite data frames may have selectively varied temporal segment lengths, so that the average data rate for each track during playback is sufficient to permit simultaneous streaming outputs of all tracks. Alternatively, the subsequent data frames may maintain the differing temporal segment length shown in FIG. 6A, if, for example, the shorter segments of the data frame are transmitting signals that have been compressed and can be expanded to enable simultaneous streaming outputs with the other uncompressed tracks having longer frame segments.

(See Jaeger col. 4: lines 3-13; col. 8: lines 35-45; col. 9: lines 35-54)

As can be seen from the foregoing, the Examiner-identified portions of Jaeger do not recite the text of clause [c] as recited in Independent Claim 1. For example, Jaeger states “the invention also encompasses constructing composite data frames with variable segment lengths; i.e., temporal segments of a plurality of audio, video, and/or data signals, in which the temporal segments differ in length of time that each signal track is sampled.” On the other hand, the cited portions of Jaeger do not recite obtaining one or more *temporal addresses* corresponding to the time a specific content is being transmitted, as recited in clause [c] of Claim 1.

Applicant has reviewed the Examiner-cited portions of Jaeger and is unable to locate a recitation of clause [c] of Claim 1. Applicant further respectfully points out that

the Examiner has provided no evidence or reason as to why the text of the reference passages should be interpreted to teach clause [c] of Independent Claim 1 as the Examiner alleges.

Given that Applicant has shown, above, what Jaeger actually recites, the question thus naturally arises as to how Examiner saw Jaeger as “teaching” something related to Clause [c] of Independent Claim 1. Applicant respectfully points out that the Applicant’s Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this and the express recitations of Jaeger as set forth, it follows that Examiner is interpreting Jaeger through the lens of Applicant’s application, which is impermissible hindsight use. Thus, at present, Examiner’s assertions regarding Jaeger are untenable. Under the MPEP guidelines as set forth above, the cited art of record fails to establish a *prima facie* case of unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons, Applicant respectfully requests that Examiner hold Independent Claim 1 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner “teaches,” Applicant infers that the Examiner is relying on “personal knowledge” and/or is taking “official notice” of one or more factors to reach the factual conclusion of what the cited technical material “teaches.” In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Applicant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner’s currently unsupported assertions regarding what the cited technical material “teaches” and/or should be interpreted to “teach.” *See, e.g., MPEP S 2144.03(C), If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence*, and 37 C.F.R. 1.104(d)(2).

Thus, for these additional reasons, and under the MPEP standards as set forth above, Applicant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 1.

Accordingly, Applicant respectfully asks Examiner to hold amended Independent Claim 1 allowable and to issue a Notice of Allowance of same.

(4) Examiner Citations to Jaeger With Regard to Clause [e] of Independent Claim 1:

Furthermore, Applicant respectfully points out that Applicant has reviewed the portions of Jaeger identified by Examiner, and so far as Applicant can discern, Jaeger also does not recite the text of clause [e] of Applicant's Independent Claim 1, which recites, “constructing the at least one content from the first part and the second part.” The Examiner again cites col. 4, lines 3-13; col. 8, lines 35-45; and col. 9, lines 35-54 of Jaeger, which state:

“In a further embodiment, a plurality of signals (audio tracks, video tracks or data tracks) from any source are acquired from any source, such as, but not limited to, data disk, magnetic tape, any optical media, a computer bus or other data bus, internet data stream, live recording, or the like. As the signals are received, incremental temporal segments of each signal are assembled into composite data frames in a memory, and the composite data frames are recorded by any data recording system or onto any recording medium, such as any magnetic or optical medium, any tape medium or any memory.”

The invention may be generalized as depicted in FIG. 5. A plurality of audio, video and/or data tracks/signals is acquired from any source, such as a recording system, data storage system, network resource, real-time sources, a computer bus or other data bus, internet data stream, live recording or the like. As stated previously, any reference to audio tracks, data tracks or video tracks is presumed to include any and all audio signals, data signals, or video signals, or any combination thereof, whether or not they are specifically configured as tracks, and any reference to one is intended to encompass all.

With regard to FIG. 6A, the invention also encompasses constructing composite data frames with variable segment lengths; i.e., temporal segments of a plurality of audio, video, and/or data signals, in which the temporal segments differ in length of time that each signal track is sampled. Thus, for example, the first temporal segment of the composite data frame may comprise 100 ms of track 1, the second segment may comprise 50 ms of track 2, and the third segment may be 100 ms, and subsequent temporal segment length may vary in similar or dissimilar fashion. Subsequent composite data frames may have selectively varied temporal segment lengths, so that the

average data rate for each track during playback is sufficient to permit simultaneous streaming outputs of all tracks. Alternatively, the subsequent data frames may maintain the differing temporal segment length shown in FIG. 6A, if, for example, the shorter segments of the data frame are transmitting signals that have been compressed and can be expanded to enable simultaneous streaming outputs with the other uncompressed tracks having longer frame segments.

(See *Jaeger* col. 4: lines 3-13; col. 8: lines 35-45; col. 9: lines 35-54)

As can be seen from the foregoing, the Examiner-identified portions of *Jaeger* do not recite the text of clause [e] as recited in Independent Claim 1. For example, *Jaeger* states “the invention also encompasses constructing composite data frames with variable segment lengths; i.e., temporal segments of a plurality of audio, video, and/or data signals, in which the temporal segments differ in length of time that each signal track is sampled.” On the other hand, the cited portion of *Jaeger* does not recite constructing the at least one content from a first part of the content and a second part of the content that are obtained by applying to a first network and a second network, at approximately the same time, one or more *temporal addresses* corresponding to the time the specific content is being transmitted from the first and second networks, as recited in clause [e] of Claim 1.

Applicant has reviewed the Examiner-cited portions of *Jaeger* and is unable to locate a recitation of clause [e] of Claim 1. Applicant further respectfully points out that the Examiner has provided no evidence or reason as to why the text of the reference passages should be interpreted to teach clause [e] of Independent Claim 1 as the Examiner alleges.

Given that Applicant has shown, above, what *Jaeger* actually recites, the question thus naturally arises as to how Examiner saw *Jaeger* as “teaching” something related to Clause [e] of Independent Claim 1. Applicant respectfully points out that the Applicant’s Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this and the express recitations of *Jaeger* as set forth, it follows that Examiner is interpreting *Jaeger* through the lens of Applicant’s application, which is impermissible hindsight use. Thus, at present, Examiner’s assertions regarding *Jaeger* are untenable. Under the MPEP guidelines as set forth above, the cited art of record fails to establish a prima facie case of

unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons, Applicant respectfully requests that Examiner hold Independent Claim 1 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner “teaches,” Applicant infers that the Examiner is relying on “personal knowledge” and/or is taking “official notice” of one or more factors to reach the factual conclusion of what the cited technical material “teaches.” In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Applicant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner’s currently unsupported assertions regarding what the cited technical material “teaches” and/or should be interpreted to “teach.” *See, e.g.,* MPEP S 2144.03(C), *If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence*, and 37 C.F.R. 1.104(d)(2).

In view of the foregoing, and under the MPEP standards as set forth above, Applicant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 1. Accordingly, for at least the foregoing reasons, Applicant respectfully asks Examiner to hold amended Independent Claim 1 allowable and to issue a Notice of Allowance of same.

2. Dependent Claims 2-36 Patentable for at Least Reasons of Dependency from Independent Claim 1.

Claims 2-36 depend either directly or indirectly from Independent Claim 1. “A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.” *See* 35 U.S.C. § 112 paragraph 4. Consequently, Dependent Claims 2-36 are patentable for at least the reasons why Independent Claim 1 is patentable. Accordingly, Applicant respectfully requests

that Examiner hold Dependent Claims 2-36 patentable for at least the foregoing reasons, and issue a Notice of Allowance on same.

C. Technical Material Cited by Examiner (Jaeger (US 6,345,028)) Does Not Show or Suggest the Text of Independent Claim 37 as Presented Herein; Notice of Allowance of Same Respectfully Requested

1. Independent Claim 37

Independent Claim 37, as amended, recites:

A system comprising:

means for receiving a request for data having at least one specific content;

means for obtaining one or more first-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content;

means for obtaining one or more second-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content;

[a] means for applying the one or more first-network temporal addresses to receive a first part of the at least one specific content being transmitted from a first network while approximately at the same time applying the one or more second-network temporal addresses to receive a second part of the at least one specific content being transmitted from a second network; and

means for constructing the at least one content from the first part and the second part.

As described below, Applicant respectfully submits that the technical material cited by Examiner does not show or suggest at least part of the text of Independent Claim 37. Accordingly, Applicant respectfully requests that Examiner allow Independent Claim 37.

a) Technical Material Cited by Examiner Does Not Show or Suggest the Text of at Least Independent Claim 37.

With respect to claim 37, Examiner has stated,

“Claims 37-72 is a system claim of the method claims 1-36 discussed above. They are rejected under the same rationale.” *See Office Action*, p. 7 (April 7, 2008).

As can be seen from the foregoing, discussed above with respect to claim 1, the Examiner-identified portions of Jaeger do not recite the text of Independent Claim 37. More specifically, Applicant has reviewed the Examiner-cited portions of Jaeger and is unable to locate a recitation of the elements of Claim 37. For example, Jaeger discloses “incremental temporal segments of each recorded audio track are read from the disk.” On the other hand, the cited portion of Jaeger does not recite “means for applying the one or more first-network temporal addresses to receive a first part of the at least one specific content being transmitted from a first network while approximately at the same time applying the one or more second-network temporal addresses to receive a second part of the at least one specific content being transmitted from a second network,” as recited in clause [a] of Claim 37.

Applicant further respectfully points out that the Examiner has provided no evidence or reason as to why the text of the reference passages should be interpreted to teach Independent Claim 37 as the Examiner alleges. Given that Applicant has shown, above, what Jaeger actually recites, the question thus naturally arises as to how Examiner saw Jaeger as “teaching” something related to Clause [a] of Independent Claim 37. Applicant respectfully points out that the Applicant’s Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this and the express recitations of Jaeger as set forth, it follows that Examiner is interpreting Jaeger through the lens of Applicant’s application, which is impermissible hindsight use. Thus, at present, Examiner’s assertions regarding Jaeger are untenable. Under the MPEP guidelines as set forth above, the cited art of record fails to establish a prima facie case of unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons, Applicant respectfully

requests that Examiner hold Independent Claim 37 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner “teaches,” Applicant infers that the Examiner is relying on “personal knowledge” and/or is taking “official notice” of one or more factors to reach the factual conclusion of what the cited technical material “teaches.” In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Applicant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner’s currently unsupported assertions regarding what the cited technical material “teaches” and/or should be interpreted to “teach.” *See, e.g.,* MPEP S 2144.03(C), *If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence*, and 37 C.F.R. 1.104(d)(2).

In view of the foregoing, and under the MPEP standards as set forth above, Applicant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 37. Accordingly, for at least the foregoing reasons, Applicant respectfully asks Examiner to hold amended Independent Claim 37 allowable and to issue a Notice of Allowance of same.

2. Dependent Claims 38-72 are Patentable for at Least Reasons of Dependency from Independent Claim 37.

Claims 38-72 depend either directly or indirectly from Independent Claim 37. “A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.” *See* 35 U.S.C. § 112 paragraph 4. Consequently, Dependent Claims 38-72 are patentable for at least the reasons why Independent Claim 37 is patentable. Accordingly, Applicant respectfully requests

that Examiner hold Dependent Claims 38-72 patentable for at least the foregoing reasons, and issue a Notice of Allowance on same.

D. Technical Material Cited by Examiner (Jaeger (US 6,345,028)) Does Not Recite the Text of Independent Claim 73 as Presented Herein; Notice of Allowance of Same Respectfully Requested

1. Independent Claim 73

Independent Claim 73, as amended, recites:

A system comprising:

[a] a temporal address unit configured to receive a request for a substance of data;
and

[b] a data switch controller configured to:

generate one or more first-network temporal addresses and second-network temporal addresses in response to the request for the substance;

apply the one or more first-network temporal addresses to receive a first part of the at least one specific content from a first network while approximately at the same time applying the one or more second-network temporal addresses to receive a second part of the at least one specific content from a second network; and

construct the at least one content from the first part and the second part.

As described below, Applicant respectfully submits that the technical material cited by Examiner does not show or suggest at least part of the text of Independent Claim 73. Accordingly, Applicant respectfully requests that Examiner allow Independent Claim 73.

a) Technical Material Cited by Examiner Does Not Recite the Text of at Least Independent Claim 73.

With respect to claim 73, the Examiner has stated,

“As per claim 73, Jaeger teaches a system comprising: a temporal address unit configured to receive a request for a substance of data (fig. 1, 5 and 6; col. 7, lines 39-52; and col. 9, line 35 to col. 10, line 23); and a data switch controller configured to generate one or more first-network temporal addresses and second-network temporal addresses in response to the request for the substance (col. 4, lines 3-13; col. 8, lines 35-45; col. 9, lines 35-54; Jaeger appears to reach first and second network, see col. 8 lines 35-45). Furthermore, different disk can be located or part on part of different network, col. 5, lines 45-67)” *See Office Action*, p. 7 (April 7, 2008).

**(1) Examiner Citations to Jaeger With Regard to
Clause [a] of Independent Claim 73:**

Applicant respectfully points out that Applicant has reviewed the portions of Jaeger identified by Examiner, and so far as Applicant can discern, Jaeger does not recite the text of clause [a] of Applicant's Independent Claim 73. Rather, the portions of Jaeger cited by Examiner with respect to Claim 73 recite as follows:

Fig. 1 is a schematic representation of the process of the invention for re-organizing a large plurality of audio/video/data tracks or signals on a disk drive for playback.

Fig. 5 is a schematic representation of another embodiment of the invention in which audio or data tracks or signals from any source, whether pre-recorded or not, are reorganized into composite data farms and recorded for future playback.

Fig. 6A-6C are schematic representations of further embodiments of composite data frames constructed in accordance with the present invention.

An alternative embodiment of the invention involves the steps of recording the original audio tracks on a disk drive 11, and reading out temporal incremental segments of each audio track in a predetermined order into a memory buffer, as described previously. As before, the temporal segments are all of the same duration, e.g., 100 ms. With regard to FIG. 3, each temporal segment may be further divided into equal sub-segments, and these segments may be assembled as a sub-section of a composite data frame. Each sub-segment comprises an incremental time slice of one audio/video/data track or signal, and each sub-section of the composite data frame comprises all of the incremental time slices for a

given time period of all the tracks/signals, assembled in a predetermined order.

With regard to FIG. 6A, the invention also encompasses constructing composite data frames with variable segment lengths; i.e., temporal segments of a plurality of audio, video, and/or data signals, in which the temporal segments differ in length of time that each signal track is sampled. Thus, for example, the first temporal segment of the composite data frame may comprise 100 ms of track 1, the second segment may comprise 50 ms of track 2, and the third segment may be 100 ms, and subsequent temporal segment length may vary in similar or dissimilar fashion. Subsequent composite data frames may have selectively varied temporal segment lengths, so that the average data rate for each track during playback is sufficient to permit simultaneous streaming outputs of all tracks. Alternatively, the subsequent data frames may maintain the differing temporal segment length shown in FIG. 6A, if, for example, the shorter segments of the data frame are transmitting signals that have been compressed and can be expanded to enable simultaneous streaming outputs with the other uncompressed tracks having longer frame segments.

Likewise, with regard to FIG. 6B, composite data frames may be constructed in which the temporal segments of the data frame are arrayed in non-serial order that may be fixed or re-arranged in each data frame. The re-ordering of the temporal segment order in subsequent composite data frames may be carried out in accordance with a predetermined function, whereby the composite data frames may be read out and played back only by devices that are equipped to carry out the predetermined function. This capability may comprise a data encryption technique that enables protected recording and playback of audio, video, and data signals and may be used to dissuade unauthorized copying of protected recordings.

As shown in FIG. 6C, the temporal segments of the respective signal track may contain data sampled at differing rates, based on the data rate of the signal track from which the segment was drawn. The data rate of each temporal segment is represented by the amount of hatching of the respective segment. For example, the composite data frame may contain temporal segments from audio tracks (at various data rates), video tracks (at higher data rates) and data tracks (at various data rates).

The techniques for forming composite data frames illustrated in FIGS. 6A-6C may be used singly or in combination. For example, differing lengths of temporal segments may be placed in variable serial order that varies with each subsequent composite data frame. Or, temporal segments containing signals of varying sample rates may be placed in variable serial order that varies with each subsequent composite data frame. Other combinatorial strategies may be apparent to those skilled in the art.

Likewise, variable bit structure among the signals being recorded and played back may be accommodated.

Also, it is noted that the recording and playback techniques disclosed herein work equally well on compressed or non-compressed data, in any of the formats illustrated in FIGS. 6A-6C.

See Jaeger (US 6,345,028, (Figs. 1, 5 and 6; col. 7, lines 39-52; col. 9, line 35 to col. 10, line 23).

As can be seen from the foregoing, the Examiner-identified portions of Jaeger do not recite the text of clause [a] as recited in Independent Claim 73. For example, Jaeger discloses “reading out temporal incremental segments of each audio track in a predetermined order into a memory buffer.” On the other hand, clause [a] recites “a *temporal address* unit configured to receive a request for a substance of data;” (emphasis added). Neither the cited Figures nor text show or recite “a *temporal address* unit” as recited in Claim 73.

Applicant has reviewed the Examiner-cited portions of Jaeger and is unable to locate a recitation of clause [a] of Claim 73. Applicant further respectfully points out that the Examiner has provided no evidence or reason as to why the text of the reference passages should be interpreted to teach clause [a] of Independent Claim 73 as the Examiner alleges.

Given that Applicant has shown, above, what Jaeger actually recites, the question thus naturally arises as to how Examiner saw Jaeger as “teaching” something related to Clause [a] of Independent Claim 73. Applicant respectfully points out that the Applicant’s Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this and the express recitations of Jaeger as set forth, it follows that Examiner is interpreting Jaeger through the lens of Applicant’s application, which is impermissible hindsight use. Thus, at present, Examiner’s assertions regarding Jaeger are untenable. Under the MPEP guidelines as set forth above, the cited art of record fails to establish a prima facie case of unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons,

Applicant respectfully requests that Examiner hold Independent Claim 73 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner “teaches,” Applicant infers that the Examiner is relying on “personal knowledge” and/or is taking “official notice” of one or more factors to reach the factual conclusion of what the cited technical material “teaches.” In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Applicant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner’s currently unsupported assertions regarding what the cited technical material “teaches” and/or should be interpreted to “teach.” *See, e.g.,* MPEP S 2144.03(C), *If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence*, and 37 C.F.R. 1.104(d)(2).

In view of the foregoing, and under the MPEP standards as set forth above, Applicant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 73. Accordingly, for at least the foregoing reasons, Applicant respectfully asks Examiner to hold amended Independent Claim 73 allowable and to issue a Notice of Allowance of same.

**(2) Examiner Citations to Jaeger With Regard to
Clause [b] of Independent Claim 73:**

Furthermore, Applicant respectfully points out that Applicant has reviewed the portions of Jaeger identified by Examiner, and so far as Applicant can discern, Jaeger also does not recite the text of clause [b] of Applicant's Independent Claim 73, which recites, “a data switch controller configured to: generate one or more first-network *temporal addresses* and second-network *temporal addresses* in response to the request for the substance; apply the one or more first-network temporal addresses to receive a first part of the at least one specific content from a first network while approximately at the same time

applying the one or more second-network temporal addresses to receive a second part of the at least one specific content from a second network; and construct the at least one content from the first part and the second part” (emphasis added).

The Examiner cites col. 4, lines 3-13; col. 8, lines 35-45; col. 9, lines 35-54; and col. 5, lines 45-67, which state:

“In a further embodiment, a plurality of signals (audio tracks, video tracks or data tracks) from any source are acquired from any source, such as, but not limited to, data disk, magnetic tape, any optical media, a computer bus or other data bus, internet data stream, live recording, or the like. As the signals are received, incremental temporal segments of each signal are assembled into composite data frames in a memory, and the composite data frames are recorded by any data recording system or onto any recording medium, such as any magnetic or optical medium, any tape medium or any memory.”

The invention may be generalized as depicted in FIG. 5. A plurality of audio, video and/or data tracks/signals is acquired from any source, such as a recording system, data storage system, network resource, real-time sources, a computer bus or other data bus, internet data stream, live recording or the like. As stated previously, any reference to audio tracks, data tracks or video tracks is presumed to include any and all audio signals, data signals, or video signals, or any combination thereof, whether or not they are specifically configured as tracks, and any reference to one is intended to encompass all.

With regard to FIG. 6A, the invention also encompasses constructing composite data frames with variable segment lengths; i.e., temporal segments of a plurality of audio, video, and/or data signals, in which the temporal segments differ in length of time that each signal track is sampled. Thus, for example, the first temporal segment of the composite data frame may comprise 100 ms of track 1, the second segment may comprise 50 ms of track 2, and the third segment may be 100 ms, and subsequent temporal segment length may vary in similar or dissimilar fashion. Subsequent composite data frames may have selectively varied temporal segment lengths, so that the average data rate for each track during playback is sufficient to permit simultaneous streaming outputs of all tracks. Alternatively, the subsequent data frames may maintain the differing temporal segment length shown in FIG. 6A, if, for example, the shorter segments of the data frame are transmitting signals that have been compressed and can be expanded to enable simultaneous streaming outputs with the other uncompressed tracks having longer frame segments.

To overcome this drawback in the playback process, the invention processes the recorded audio tracks by re-ordering the audio data and

recording new composite data frames onto a disk drive. First, incremental temporal segments of each recorded audio track are read from the disk 11 in a predetermined numerical order, e.g., starting with track 1 and ending with the last recorded track (e.g., track N). The temporal segments are all of the same short duration, such as 100 ms, although other durations may be used. In the example of FIG. 1, the first 100 ms segments of tracks 1-N are read in a predetermined order from the disk 11 and placed in a RAM buffer in the predetermined order, where they are assembled into composite data frame 1. Frame 1 is labeled with a time stamp which indicates the starting point of the frame and also the number of the frame. Likewise, the second 100 ms segments of tracks 1-N are then read from the disk drive 11 and placed in the RAM buffer as data frame 2, which is also labeled with its respective time stamp. This process is reiterated until the entire lengths of all of the audio tracks or signals are re-ordered into the composite data frame mode. Reiteration may be carried out R times, where R may vary from zero to any positive integer.

(See Jaeger col. 4: lines 3-13; col. 8: lines 35-45; col. 9: lines 35-54; col. 5, lines 45-67)

As can be seen from the foregoing, the Examiner-identified portions of Jaeger do not recite the text of clause [b] as recited in Independent Claim 73. For example, Jaeger states “the invention also encompasses constructing composite data frames with variable segment lengths; i.e., temporal segments of a plurality of audio, video, and/or data signals, in which the temporal segments differ in length of time that each signal track is sampled.” On the other hand, the cited portion of Jaeger does not recite obtaining one or more *temporal addresses* corresponding to the time a specific content is being transmitted as recited in clause [b] of Claim 73.

Applicant has reviewed the Examiner-cited portions of Jaeger and is unable to locate a recitation of clause [b] of Claim 73. Applicant further respectfully points out that the Examiner has provided no evidence or reason as to why the text of the reference passages should be interpreted to teach clause [b] of Independent Claim 73 as the Examiner alleges.

Given that Applicant has shown, above, what Jaeger actually recites, the question thus naturally arises as to how Examiner saw Jaeger as “teaching” something related to Clause [a] of Independent Claim 73. Applicant respectfully points out that the Applicant’s Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this

and the express recitations of Jaeger as set forth, it follows that Examiner is interpreting Jaeger through the lens of Applicant's application, which is impermissible hindsight use. Thus, at present, Examiner's assertions regarding Jaeger are untenable. Under the MPEP guidelines as set forth above, the cited art of record fails to establish a *prima facie* case of unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons, Applicant respectfully requests that Examiner hold Independent Claim 73 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner "teaches," Applicant infers that the Examiner is relying on "personal knowledge" and/or is taking "official notice" of one or more factors to reach the factual conclusion of what the cited technical material "teaches." In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Applicant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner's currently unsupported assertions regarding what the cited technical material "teaches" and/or should be interpreted to "teach." *See, e.g., MPEP S 2144.03(C), If Applicant Challenges a Factual Assertion as Not Properly Officially Notices or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence*, and 37 C.F.R. 1.104(d)(2).

In view of the foregoing, and under the MPEP standards as set forth above, Applicant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 73. Accordingly, for at least the foregoing reasons, Applicant respectfully asks Examiner to hold amended Independent Claim 73 allowable and to issue a Notice of Allowance of same.

2. Dependent Claims 74-80 are Patentable for at Least Reasons of Dependency from Independent Claim 73.

Claims 74-80 depend either directly or indirectly from Independent Claim 73. "A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers." *See* 35 U.S.C. § 112 paragraph 4. Consequently, Dependent Claims 74-80 are patentable for at least the reasons why Independent Claim 73 is patentable. Accordingly, Applicant respectfully requests that Examiner hold Dependent Claims 74-80 patentable for at least the foregoing reasons, and issue a Notice of Allowance on same.

VI. CONCLUSION

Applicant may have during the course of prosecution cancelled and/or amended one or more claims. Applicant notes that any such cancellations and/or amendments will have transpired (i) prior to issuance and (ii) in the context of the rules that govern claim interpretation during prosecution before the United States Patent and Trademark Office (USPTO). Applicant notes that the rules that govern claim interpretation during prosecution form a radically different context than the rules that govern claim interpretation subsequent to a patent issuing. Accordingly, Applicant respectfully submits that any cancellations and/or amendments during the course of prosecution should be held to be tangential to and/or unrelated to patentability in the event that such cancellations and/or amendments are viewed in a post-issuance context under post-issuance claim interpretation rules.

Insofar as that the Applicant may have during the course of prosecution cancelled/amended claims sufficient to obtain a Notice of Allowability of all claims pending, Applicant may not have during the course of prosecution explicitly addressed all rejections and/or statements in Examiner's Office Actions. The fact that rejections and/or statements may not be explicitly addressed during the course of prosecution should NOT be taken as an admission of any sort, and Applicant hereby reserves any and all rights to contest such rejections and/or statements at a later time. Specifically, no waiver (legal, factual, or otherwise), implicit or explicit, is hereby intended (e.g., with respect to any facts of which Examiner took Official Notice, and/or for which Examiner has supplied no objective showing, Applicant hereby

contests those facts and requests express documentary proof of such facts at such time at which such facts may become relevant). For example, although not expressly set forth during the course of prosecution, Applicant continues to assert all points of (e.g. caused by, resulting from, responsive to, etc.) any previous Office Action, and no waiver (legal, factual, or otherwise), implicit or explicit, is hereby intended. Specifically, insofar as that Applicant does not consider the cancelled/unamended claims to be unpatentable, Applicant hereby gives notice that it may intend to file and/or has filed a continuing application in order prosecute such cancelled/unamended claims.

With respect to any cancelled claims, such cancelled claims were and continue to be a part of the original and/or present patent application(s). Applicant hereby reserves all rights to present any cancelled claim or claims for examination at a later time in this or another application. Applicant hereby gives public notice that any cancelled claims are still to be considered as present in all related patent application(s) (e.g. the original and/or present patent application) for all appropriate purposes (e.g., written description and/or enablement). Applicant does NOT intend to dedicate the subject matter of any cancelled claims to the public.

The Examiner is invited to contact Mark C. Farrell (509) 290-6316 or Dale R. Cook at (425) 467-2260 with any issues that may advance prosecution of the application on the merits.

Respectfully submitted,

July 3, 2008
Date

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